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No. 288

FILED
AUG 15 19
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1960

AMERICAN AUTOMOBILE ASSOCIATION, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case presents the same question as *New Jersey Automobile Club* v. *United States*, pending on petition for a writ of certiorari (No. 140). Both cases were decided by the Court of Claims the same day. For the reasons stated in the brief in opposition filed in No. 140, the petition here should also be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

AUGUST 1960

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REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Solicitor General, in opposing certiorari in the case at bar, blandly assumes that this case presents the same question as *New Jersey Automobile Club* v. *United States,* also pending on petition for a writ of certiorari (No. 140).

Such is not the case, the difference being that petitioner *here* has proved by uncontradicted evidence,

including expert testimony, that its regularly employed method of accounting for prepaid membership dues was "realistic," was in accord with sound accounting principles, and did reflect its income clearly. By contrast, the Court of Claims, in *New Jersey Automobile Club, supra,* found as a fact that the method of accounting used by that taxpayer did not clearly reflect its income.

In its Brief in Opposition to Certiorari in the *New Jersey Automobile Club* case, the Solicitor General argued:

> "In an effort to avoid the controlling effect of the decision in *Automobile Club of Michigan,* the taxpayer fails to address itself to the critical question—dispositive of this case and decided adversely to it below—of whether its method of accounting clearly reflected its taxable income."

Such a contention has no conceivable application to the case at bar, where the findings of fact made by the Court of Claims, including Nos. 22, 23, 26, 27, 28, 30 and 31, clearly establish that the petitioner did prove that its method of accounting was in accord with generally accepted accounting principles and practices and clearly reflected its income.

Petitioner based its request for a writ of certiorari on the ground that a direct conflict exists between the decision of the Court of Claims in the case at bar and the decision of the United States Court of Appeals for the Second Circuit in *Bressner Radio, Inc.* v. *Commissioner,* 267 F. (2d) 520 (1959). Petitioner also relied upon the diametrically opposed interpretations of this Court's decision in *Automobile Club of Michigan, supra.*

The United States, in its Memorandum in Opposition to Certiorari in *New Jersey Automobile Club,* fails to mention or discuss either point. Petitioner respectfully suggests that the Solicitor General file a supplemental brief in the case at bar which addresses itself not to the issue involved in another case but to the issue involved in this proceeding, namely, whether the decision of this Court in *Automobile Club of Michigan* v. *Commissioner, supra,* was intended to deny to a taxpayer the use of a method of accounting for prepaid membership dues which does clearly reflect its income.

Respectfully submitted,

FLEMING BOMAR
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